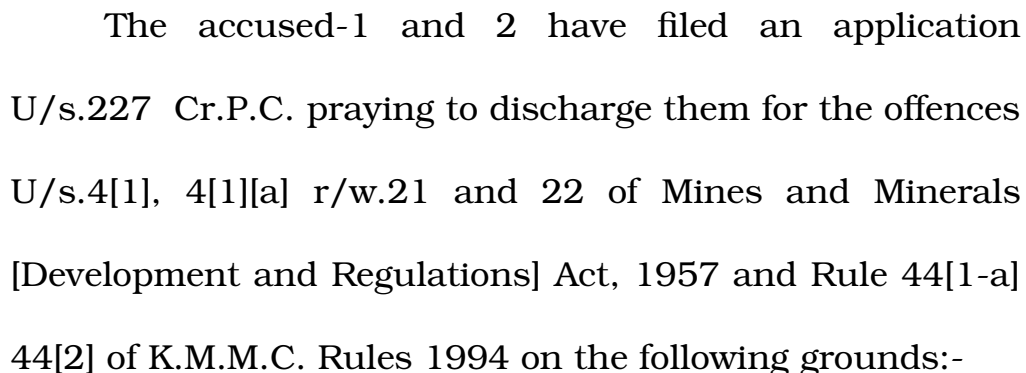




2. As per the allegations of the complainant in his complaint, that he had visited the spot on 19.6.2019 and conducted panchanama and recorded the statement of panchas on the same day. But he filed the Private Complaint before the Senior Civil Judge and JMFC, Ramdurg on 27.6.2019 with inordinate delay of 9 days. The explanation for delay in filing the said complaint was not at all mentioned in the said Private Complaint. Further, by looking to the documents of panchanama and other evidence, which clearly goes to show that there is absolutely no any recovery and seizure of any of the material objections like vehicles, equipment that are used for crushing the stones or mining activities which were alleged to be going on in R.S.No.295/2, 296, 357/1, 321/1 of Batakurki village of Ramdurg Taluk. It is needless to mention that lands are no way belongs to the present accused. The entire allegation in the complaint are created and concocted on the instigation of some local villagers and politicians to harass the accused mentally, physically as well as financially. The complainant had not at all

recorded the statement of land owners of Sy.No.295/2, 296, 357/1, 321/1 of Batakurki village where alleged illegal mining was conducted, which shows that the complainant has not at all visited the alleged spot and all the allegations made in complaint are false and the same was filed only to please some of the self-declared activists of Batakurki village, Ramdurg Taluk. The accused-1 had obtained all the required permissions as required under the law, he has a valid quarrying licence till December-2021. Hence, there is no any requirement for the accused to conduct illegal mining in some other persons' land. There is absolutely no any documentary evidence is available to show that the alleged illegal mining was conducted by the accused. In view of the establishment of Special Courts to try offences under the M.M. [D.R] Act 1957 and rules framed thereunder, no complaint can either be entertained by Magistrate nor prosecution can be launched before him. Therefore, impugned order of taking cognizance of offences punishable under the provisions of M.M [D.R.] Act by the learned Magistrate and issuance of

summons are bad in law and same are liable to be quashed. It is the case of the prosecution is that there is illegal mining and transportation by the accused persons. If that is the factual state of affairs, when the case is made out for cognizable offence as per the settled principles of law, the complainant ought to have registered the F.I.R. before the jurisdictional police and then proceeded for search, seizure and mahazar. It is reflected from the complaint and the prosecution case that on the basis of definite and credible information, the complainant has arranged for the panchas those who are the complainants and conducted the spot panchanama at 11.A.M. on 19.6.2019. But not filed complaint before the police and F.I.R. has been registered. However Private Complaint was registered on 27.6.2019 after the gap of 9 days. If that is the case, the rule mandates the police to register a F.I.R. and then proceed for the search, seizure and mahazar. But in the case on hand, under the guise of investigation the search, seizure and mahazar etc., have not been done without registering the F.I.R. On this ground alone, entire

proceedings are not maintainable. The complainant has specifically alleged that the present accused after manipulating the farmers under the guise of digging the well, the accused were engaged in the stone crushing and other mining activity. The complainant has made his allegation stating that the farmers and some of their leaders has specifically stated to the complainant. But neither the list of farmers has been furnished nor any of their statements have been recorded by the complainant. Further no list of witnesses as mandated under section 204(2) of Cr.P.C is furnished. The averments in the complaint, statement and the documents would go to prima-facie show that the basic and essential ingredients of the offenses such as I) the occurrence of offence ii) commission of the offence by the accused iii) non seizure of any mines or minerals, iv) non seizure of any of the vehicles, materials, equipment required for the commission of alleged offence, are completely missing. This court after perusing the complaint, statement and document evidence can easily come to the conclusion that there are no

offences committed by the accused persons. Upon consideration of the record of the case in hand and the documents submitted by the complainant, it is crystal clear that there is no any sufficient grounds for proceeding against the accused and therefore the accused are entitled to be discharged. Hence on these grounds the accused no. 1 and 2 prayed to allow application under section 227 of Cr.P.C. and discharge them.

3. The learned public prosecutor has filed the objection and produced report submitted by complainant, produced circular issued by the director of Mines and Geology Department, Bangalore and also produced the Karnataka gazette notification dated 21.1.2014 wherein the government has shown in the designation of officers/ authority, jurisdiction and department authorizing to exercise power under subsection (3) and (4) of section 21 and 22 of MMDR Act and sub rule (3) rule 43 and 46 of KMMC Rules. In his objection the learned public prosecutor has taken contention that there is prima- facie material to show that the accused persons have committed

the offences under section 4(1A), section 21 and 22 of MMDR Act 1957 and rule 42(1), 44(2) of KMMC Rules. The complainant, geologist, his colleague Smt. Bindana Patil, Geologist, Lokesh Chauvan, Revenue inspector, Mr. Linganna Gouda, Village accountant, and panchas conducted the spot verification in Survey No. 295/2, 296, 357/1, 321/1 of Batakurki Village of Ramdurga Taluk of 19.6.2018 at 11 am and found that the accused who holding the quarry license in respect of adjacent land in Survey No. 410(P) illegally did mining to the extent of 1.5 acres in Survey No. 295/2, 296, 357/1, 321/1 and illegally transported the mining stones. Hence the complainant conducted the panchanama in the presence of the panchas and also recorded the statements of the farmers of that village. Thereafter on the basis of the private complaint lodged by the complainant Salim Mulla, the JMFC court at Ramadurg registered the case in CC no. 371/2019 and thereafter committed the case to this court. As the complainant was done verification of the documents in his office and he was also discharged the duties with

respect to other files also 9 day delay was occurred in lodging his complaint before JMFC court. The delay is for bonafide reasons. At the time of the spot inspection as there was no vehicle equipment found in the place of mining. Hence the complainant could not seized any material objects. However the farmers of the village have submitted their statement in writing regarding the illegal mining conducted by the accused in Survey No. 295/2, 296, 357/1, 321/1. As on the date of the inspection, the owners of these Survey Nos were not present in that place. Hence the complainant could not record their statement. The said owners colluding with the accused assisted the accused to commit illegal mining activities. Accused no. 1 who holding the mining license to conduct the stone quarry in Survey No.410, the accused without having any permission or license illegally conducted mining and transported stones in Survey No.295/2, 296, 357/1, 321/1 and thereby committed the offence. As per the judgment of Hon'ble high Court of Karnataka in Criminal Petition No.6279 of 2017 the director of Mines and Geology issued

circular and directed to file private complaint to the JMFC court in respect of MM [D.R.] Act case. The complainant geologist of Mines and Geology department Belagavi, is having authority to file complaint. As per the decision of Hon'ble High court of Karnataka reported in ILR 20018 Karnataka 1497, between Vivek and another V/s Karnataka state, the Hon'ble High Court held that the police have no jurisdiction to register the case and submit FIR to the JMFC court and it is the complainant mentioned of section 22 of MMDR Act shall file complain before JMFC court. The complainant along with his complaint produced all the documents including Panchanama statements of panchas and witnesses and list of witnesses to the court there is sufficient grounds for proceeding against the accused for the offences under section 4(1A), 21 and 22 of the Mines and Mineral (Development and Regulation) Act of 1957 and KMMC rules section 3(1),6(2), 42(1), 44(2), 44(1). there is no sufficient grounds made out by the accused to discharge them for the said offences. Hence on these

grounds the learned public prosecutor prayed for rejection of the application.

4. The learned counsel for the accused produced the documents such as 1. xerox copy of the quarrying lease/license deed. 2. copy of date wise information i.e., royalty amount paid to the government of Karnataka, 3. certified copy of Representation letter and other documents submitted by Sri. Sadeppa who is the owner of Survey No. 295/2 to the Deputy Director , Mines and Geology Belagavi. 4. certified copy of Representation letter and other documents submitted by Sri. Vithal Lamani who is the owner of Survey No. 296 to the Deputy Director , Mines and Geology Belagavi. 5. certified copy of Representation letter and other documents submitted by Sri Maruthi Lamani who is the owner of Survey No. 357/1 to the Deputy Director , Mines and Geology Belagavi.

5. I have heard the arguments on the side of the learned counsel for the accused and learned public prosecutor and perused the entire records.

6. The following points arise for my consideration:-

Point NO.1:- Whether the accused has made out sufficient grounds to allow this application filed under S.227 Cr.P.C.

Point NO.2:- What order?

7. My findings to the above points are as below:-

Point NO.1:- In the negative

Point NO.2:- As per the final order below, for the following

REASONS

8. POINT NO.1:- Based on the private complaint lodged by the complainant, Sri Salim Mulla Geologist of Deputy Director's office, Mines and Geology Department, Belagavi on 27.6.2019 to the court of senior civil judge and JMFC Ramadurg, the court after perusal of complaint and connected papers came to conclusion that the complainant has made out prima-facie case against the accused no. 1 and 2. for the offences punishable under section 4(1A), section 21 and 22 of Mines and Minerals (Development and Regulation) Act 1957 and rule 44(1A) and rule 44(2) of KMMC rules 1994 and taken cognizance of the offences and passed order dated 1.7.2019 to register the criminal case and issued summons to the accused. Accordingly case

in CC No.371/2019 registered against accused. Thereafter as per order dated 29.12.2020, case was committed to this court. The complainant has rightly filed his private complaint along with the documents such as spot panchanama, statements of witnesses, RTC, photos and other documents. The decision cited by the learned public prosecutor in his objection which is reported in ILR 2018 Karnataka 1497 between Vivek and another V/s State of Karnataka and Decision of Hon'ble High Court in criminal petition No. 6279/2017 rightly followed by the complainant and submitted his private complaint before JMFC court at Ramdurg. The contention of the accused is that the police should have registered First Information Report and then they should proceed for the search, seizure and mahazar is not acceptable. Since there is allegation against accused that the accused persons have committed the offences punishable under section 4(1A), section 21 and 22 of Mines and Minerals (Development and Regulation) Act 1957 and rule 44(1A) and rule 44(2) of KMMC rules 1994 the complainant, who is Geologist of the mines and mineral

department who is the proper Authority to file the complaint has rightly filed his private complaint before JMFC court at Ramdurg. Another contention of the accused is that the complaint should have filed before the special court i.e., this special court is also not acceptable because the special court has no jurisdiction to take cognizance of the offences. The Special court can try the offence of MMDR Act only if the jurisdictional magistrate commit the case to the Special court. The learned JMFC rightly taken cognizance of the offence. Thereafter committed the case to this Special Court. The contention of the accused is that the complainant should have lodged the complaint before the Special Court is not acceptable. There is no procedural irregularity committed by the complainant filing his complaint before JMFC court Ramadurg and the JMFC court on the basis of complaint and documents taken cognizance of the offence and registered the case as CC no. 371/2019 and thereafter committed the case to this special court.

9. Another contention taken by the accused is that the complainant has not submitted witness list along with the complaint as mandated under section 204(2) of Cr.P.C. This contention of the accused also not acceptable because the complainant along with his complaint submitted the witness list to the JMFC court which contains the list of witness No. 1 to 5 who were all official witnesses including the complainant who visited the spot for inspection, another set of Panch witnesses who are witness no. 1 to 5 who are all signatory to the spot panchanama and third set of the witness no. 1 to 4 who are all witness given statements before the complainant. Hence the contention of the accused is that the complainant is not furnished the witness list is not at all acceptable. It seems that the accused have not perused the records properly.

10. The accused persons have taken contention that they have obtained quarry license to conduct the quarry work in Survey No. 410. The accused persons have produced copy of quarrying Lease/License deed, produced the documents for payment of royalty amount to the

government. The prosecution has not denied the fact that the accused no. 1 had obtained the quarrying license to carry out quarry work in Survey No 410. It is the specific contention of the prosecution is that the accused persons who were holding the quarry license to conduct quarry in Survey No. 410(p), without having any permit of license to conduct the stone quarry in Survey No. 295/2, 296, 357/1, 321/1 by misrepresenting the owners of the Survey Nos. that they will dig the well in their land illegally done stone mining and transported the same and crushed the stones. The complainant in his complaint itself mentioned that the accused persons who holding quarry license/quarry lease of Survey No. 410 by instigating the owners of Survey No. 295/2, 296, 357/1, 321/1 by saying them that they will dig the well in their land illegally extracted the stones by mining work and transported the stones by crushing the same. The learned counsel for the accused produced the copy of representation letter given by the owners of Survey No. 295/2, 296 and 357/1 to the Deputy Director of Mines and Geology Belagavi, wherein they have

stated that they have repaired their well and they have not dig any new well. Whether such representation given by the owners of Survey No.295/2, 296, 357/1 is acceptable or not can be decided only after full fledged trial. It is now settled principle of law is that while considering the discharge application, the court must see the prosecution papers such as complaint and other documents produced by the complainant to find out whether there is sufficient grounds to proceed against the accused. At this stage this court cannot go into detail regarding the documents produced by the accused. On perusal of the complaint averments the complainant has made allegation against the accused that they have illegally conducted stone mining in in Survey No. 295/2, 296, 357/1, 321/1 to the extent of 1.5 acres and transported the stones illegally without obtaining permit or license from the government. The complaint averments are supported by the spot panchanama and the statement given by the witnesses Mallikarjuna Desai, Basappa Hucchanavar, Bassappa Desai and Manjunath Desai. The complainant along with

the complaint also produced photographs of the quarry place along with CD, which would go to show that the accused persons had indulged in illegal stone quarry business and done illegal quarry in an area of 1.5 acres and extracted stone without obtaining permit of license from the government or concerned department. Mere production of quarry license of the adjacent property bearing no. 410 is not sufficient to hold that the accused persons have not done illegal quarry in Survey No. 295/2, 296, 357/1, 321/1. The averments made in private complaint which is supported by the documents such as spot panchanama, photographs and CD, RTCs of lands, statements of the witnesses are sufficient to hold that there is sufficient material to proceed against the accused for the offences punishable under section 4(1A), section 21 and 22 of Mines and Minerals (Development and Regulation) Act 1957 and rule 44(1A) and rule 44(2) of KMMC rules 1994. There is no sufficient grounds made out by the accused to allow their application filed under 227 of Cr.P.C and to

discharge them for aforesaid offences. Hence I answered point no. 1 in the negative.

11. Point No.2:- It is made it clear that any observations made herein above in point No.1 is meant for disposal of this application and has no bearing on the merits of the case. Accordingly, the application deserves to be rejected and this court proceeds to pass the following:

ORDER

The application filed by accused no. 1 and 2 under Section 227 of Cr.P.C. is dismissed.

To frame charge by

[Partly typed by me and partly typed by the stenographer, transcript revised and modified and then pronounced by me in the open court on this the 25th day of AUGUST-2022]

[Mohan Prabhu]

**IV Additional District &
Sessions Judge & Special
Judge for M.M.[D.R.] ACT
cases, Belagavi**

[order is pronounced in the open court vide separate order]

ORDER

The application filed by accused no. 1 and 2 under Section 227 of Cr.P.C. is dismissed.

To frame charge by

**IV Additional District &
Sessions Judge & Special
Judge for M.M.[D.R.] ACT
cases, Belagavi**